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September 1, 2004

**VIA EMAIL AND OVERNIGHT DELIVERY**

Ms. Mary L. Cottrell, Secretary  
Massachusetts Department of Telecommunications and Energy  
One South Station  
Boston, Massachusetts 02110

Re: D.T.E. 04-33: Petition of Verizon New England Inc. d/b/a Verizon Massachusetts for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*

Dear Ms. Cottrell:

A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, Broadview Networks Inc. and Broadview NP Acquisition Corp., Bullseye Telecom Inc., Cleartel Telecommunications, Inc. f/k/a Essex Acquisition Corp., Choice One Communications of Massachusetts Inc., Comcast Phone of Massachusetts Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, DSCI Corporation, KMC Telecom V Inc., Spectrotel Inc., Talk America Inc., XO Communications, Inc. and XO Massachusetts, Inc. (the "Joint Parties"), through counsel, hereby respond to the August 23, 2004 Memorandum of the Massachusetts Department of Telecommunications and Energy (the "Department") in the above-referenced proceeding. The Joint Parties submit that the Department should maintain its current proceeding for arbitration of an interconnection agreement amendment between Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon") and competitive local exchange carriers ("CLECs") within the Commonwealth of Massachusetts that reflects the permanent unbundling rules that will promulgated by the Federal Communications Commission ("FCC") in the near future. Moreover, Verizon's Notice of Withdrawal<sup>1</sup> fails to offer good reason why *any* carrier named in

<sup>1</sup> Notice of Withdrawal of Petition for Arbitration as to Certain Parties at Exhibit A (Aug. 20, 2004).

Verizon's Petition for Arbitration should be denied the opportunity to properly amend its interconnection agreement with Verizon in this proceeding, and therefore, the Department should preclude Verizon's Notice of Withdrawal from taking effect.

The Interim UNE Rules released by the FCC on August 20, 2004,<sup>2</sup> do not require any immediate action by the Department to arbitrate an amendment to interconnection agreements between Verizon and Massachusetts CLECs. To the contrary, the Interim UNE Rules expressly preserve, until the earlier of six (6) months after publication of the Interim UNE Rules in the Federal Register or publication of the FCC's permanent unbundling rules, the rates, terms and conditions applicable to switching, enterprise market loops and dedicated transport under existing interconnection agreements between Verizon and Massachusetts CLECs.<sup>3</sup> Accordingly, any immediate action by the Department to arbitrate an interconnection agreement amendment between Verizon and Massachusetts CLECs would be premature.<sup>4</sup>

Nonetheless, the Department should maintain the above-captioned proceeding for arbitration of an interconnection agreement amendment at such time as permanent unbundling rules are issued by the FCC. Specifically, the Joint Parties anticipate that an interconnection agreement amendment will be required to effectuate the FCC's permanent unbundling rules, and the permanent unbundling rules will form the legal basis for such amendment. Moreover, because the FCC Chairman Powell has committed to issuing permanent unbundling rules before the end of this year,<sup>5</sup> the Department should not require Verizon or Massachusetts CLECs to expend additional resources to initiate a second consolidated arbitration proceeding that, in many ways, would be duplicative of the arbitration proceeding currently before the Department. Accordingly, any action by the Department to maintain the above-referenced proceeding would be consistent with the Interim UNE Rules and would promote administrative efficiency.

The Interim UNE Rules do not directly impact Verizon's Notice of Withdrawal filed with the Department in the above-referenced proceeding. However, as discussed more fully below, the Department should preclude Verizon's Notice of Withdrawal from taking effect. First, Verizon does not offer *any* contractual change-of-law provision to support its sweeping

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<sup>2</sup> *In the Matter of Unbundled Access to Network Elements* (WC 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179 (rel. Aug. 20, 2004). ("Interim UNE Rules")

<sup>3</sup> *Id.* at ¶¶ 1, 16, 21.

<sup>4</sup> Importantly, Verizon also has filed a Petition for a Writ of Mandamus with the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Assoc. v. FCC*, Docket Nos. 00-1012, *et al.*, that, if granted, ultimately will impact the Department's treatment of this arbitration proceeding. Petition of Verizon, Qwest Communications International Inc. and United States Telecom Association for a Writ of Mandamus to Enforce the Mandate of this Court, *United States Telecom Assoc. v. FCC*, Docket Nos. 00-1012, *et al.* (filed Aug. 23, 2004).

<sup>5</sup> Interim UNE Rules, Statement of Chairman Michael K. Powell.

assumption that certain interconnection agreements between Verizon and Massachusetts CLECs permit unilateral termination by Verizon of unbundled network elements ("UNES") that no longer are required under section 251(c)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(c)(3) (the "Act"). Second, any claim by Verizon that certain interconnection agreements between Verizon and Massachusetts CLECs do not require a written amendment to terminate UNES currently provided by Verizon, under the rates, terms and conditions set forth in those interconnection agreements, was waived by Verizon's failure to omit the appropriate carriers from its Petition for Arbitration in the first instance.

In its Notice of Withdrawal, Verizon audaciously suggests that may it exclude from this proceeding *over 100 parties* on the basis of certain unspecified contract provisions contained in those parties' interconnection agreements,<sup>6</sup> and accordingly, that Verizon may unilaterally discontinue certain of its UNE offerings within Massachusetts to those CLECs. Notwithstanding Verizon's bald assertion that such a "contract right" in fact exists, the Notice of Withdrawal fails to present, as to *any* interconnection agreement, a single contract provision that would permit Verizon to discontinue its offering of UNES to Massachusetts CLECs. Accordingly, the Department should not permit Verizon, on the basis of its unsubstantiated notice filing alone, to unilaterally withdraw any parties from this proceeding.

Even if certain interconnection agreements between Verizon and Massachusetts CLECs could be read to permit Verizon to discontinue the UNE offerings no longer subject to Verizon's section 251(c)(3) unbundling obligations (and presumably they cannot), Verizon failed to properly exclude those CLECs from its initial Petition for Arbitration filed in this proceeding,<sup>7</sup> and thus Verizon's claim to withdraw those CLECs from this proceeding is waived. Importantly, Verizon named as parties to this proceeding *any* CLEC or CMRS provider having interconnection agreements with Verizon for the Commonwealth of Massachusetts "that require Verizon to provide UNES."<sup>8</sup> In response to Verizon's Petition for Arbitration, the Department and many Massachusetts CLECs have devoted considerable time and resources, over a period of six months, to arbitrating a suitable interconnection agreement amendment that incorporates the Triennial Review Order and the subsequent decision of the D.C. Circuit in *United States Telecom Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004). Accordingly, Verizon cannot now, at this late date, unilaterally exclude from this proceeding *over 100 telecommunications companies* which Verizon entangled in this proceeding in the first instance.

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<sup>6</sup> Notice of Withdrawal at Exhibit A.

<sup>7</sup> Petition for Arbitration of Verizon New England Inc. at 1 (Feb. 20, 2004).

<sup>8</sup> *Id.*

Ms. Mary Cottrell, Secretary  
Massachusetts Department of Telecommunications and Energy  
September 1, 2004  
Page Four

Please feel free to contact Brett Heather Freedson at (202) 887-1211 if you have any questions regarding this filing, or require further information.

Respectfully submitted,

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